

IN THE SUPREME COURT OF THE STATE OF DELAWARE

|                     |   |                                 |
|---------------------|---|---------------------------------|
| STEPHEN M. CASTURA, | § |                                 |
|                     | § | No. 558, 2009                   |
| Defendant Below,    | § |                                 |
| Appellant,          | § | Court Below—Superior Court      |
|                     | § | of the State of Delaware in and |
| v.                  | § | for New Castle County           |
|                     | § |                                 |
| STATE OF DELAWARE,  | § |                                 |
|                     | § |                                 |
| Plaintiff Below,    | § | Cr. D No. 0505012449            |
| Appellee.           | § |                                 |

Submitted: November 16, 2009

Decided: February 16, 2010

Before **STEELE**, Chief Justice, **JACOBS** and **RIDGLEY**, Justices.

**ORDER**

This 16<sup>th</sup> day of February 2010, upon consideration of the appellant's opening brief, the appellee's motion to affirm pursuant to Supreme Court Rule 25(a), and the Superior Court record, it appears to the Court that:

(1) The appellant, Stephen M. Castura, filed an appeal from the Superior Court's September 2, 2009 denial of his motion for reduction of sentence under Superior Court Criminal Rule 35(b). The appellee, State of Delaware, has moved to affirm the Superior Court's judgment on the basis

that it is manifest on the face of Castura's opening brief that the appeal is without merit.<sup>1</sup> We agree and affirm.

(2) In January 2006, Castura pled guilty to Robbery in the Second Degree ("robbery case") and was sentenced to five years at Level V incarceration suspended after six months for probation. In November 2007, the Superior Court found Castura in violation of probation (VOP) in the robbery case and sentenced him to four years and six months at Level V suspended for one year of probation. Under "special conditions," the Superior Court stated that it "retain[ed] the jurisdiction to modify this sentence."<sup>2</sup>

(3) In September 2008, a Superior Court jury convicted Castura of Possession of a Firearm by a Person Prohibited and several related offenses ("PFBPP case"). On November 28, 2008, the Superior Court sentenced Castura on the PFBPP case to a mandatory three-year term at Level V incarceration and to an additional three years of imprisonment suspended for one year probation. At the same time, the Superior Court found Castura guilty of VOP in the robbery case and sentenced him to four years at Level V suspended after two years for one year of probation.

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<sup>1</sup> Del. Supr.Ct. R. 25(a).

<sup>2</sup> *State v. Castura*, Del. Super., Cr. ID No. 0505012449, Johnston, J. (Nov. 20, 2007) (VOP sentence order).

(4) On December 15, 2008, Castura moved to reduce the sentence imposed on November 21, 2008. By order dated January 22, 2009, the Superior Court denied the motion. On July 16, 2009, Castura again moved to reduce the sentence imposed on November 21, 2008. By order dated September 2, 2009, the Superior Court denied the motion. This appeal followed.

(5) This Court reviews the Superior Court's denial of a motion for reduction of sentence for an abuse of discretion.<sup>3</sup> In this case, we can discern no error or abuse of discretion in the Superior Court's denial of Castura's second motion for reduction of sentence.

NOW, THEREFORE, IT IS ORDERED that the State's motion to affirm is GRANTED. The judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Henry duPont Ridgely  
Justice

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<sup>3</sup>*Hickman v. State*, 2003 WL 22669335 (Del. Supr.) (citing *Shy v. State*, 236 A.2d 926, 927 (Del. 1968)).